IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6309 OF 2007

Ashwini Sahakari Rugnalaya and Research Centre ..Petitioner

Vs.

Shri Ashok Bhujanga Vhotakar ..Respondent

Mr. Nitin Jamdar for petitioner.
Ms. L.H. Belindage for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : December 12, 2007.

P.C.:

1. Heard Mr. Jamdar the learned counsel for the petitioner. The respondent was employed as Lab Technician from 1994 by the petitioner - Medical Centre and he came to be dismissed by an order dated 22/9/2003 by way of punishment based on the Departmental Enquiry proceedings for acts of misconduct. The respondent, therefore, filed Complaint (ULP) No. 13 of 2004 before the Labour Court at Solapur. Two preliminary issues were framed, namely, (a) whether the enquiry conducted was in keeping with the principles of natural justice and (b)

whether the findings of the Enquiry Officer were just and proper. The learned Judge of the Labour Court decided both these issues by his order dated 6/12/2005 and answered against the present petitioner. Consequently, the petitioner challenged the said order in Revision Application (ULP) No.12 of 2006 which came to be partly allowed by the learned Member of the Industrial Court at Solapur as per his judgment and order dated 8/6/2007. The Industrial Court held that the enquiry was conducted in keeping with the principles of natural justice and, therefore, it set aside the findings of the Labour Court on that issue. However, the Industrial Court confirmed the findings of the Labour Court on the second issue, namely, that the findings recorded by the Enquiry Officer were perverse and the charge could not be proved. The petitioner is aggrieved by the concurrent findings on the second issue and hence this petition.

2. The learned Member of the Industrial Court noted that the complainant had submitted an application on 28/7/2003 for sick leave of 14 days from 26/7/2003 to 9/8/2003 and this leave application was based on the certificate issued by Dr. S.

Prabhakar stating that the complainant required 15 days bed rest from 25/7/2003. The certificate was issued by the petitioner - Medical Centre only and accordingly the leave was sanctioned. The complainant was the President of the Union representing the employees of the petitioner - Medical Centre. From the statements of two witnesses i.e. Gautam Chaudhary and Madhukar Wangari recorded during the enquiry proceedings it was clear that the complainant had participated in the hunger strike on 8/8/2003 and 9/8/2003 i.e. on the last two days of his leave. The management had charged the complainant of anti-management activities. Both the courts below noted that participation in the hunger strike by itself is not an act of misconduct unless it was demonstrated some violent actions or participation in some other illegal activities by him while sitting on hunger strike.

3. The complainant was on medical leave duly sanctioned and he was not hospitalised. He being the President of the Union, he participated in the hunger strike towards the last two days of his medical leave and that by itself would not be an act of misconduct.

Mr.Jamdar has placed on record a copy of the show-cause notice dated 18/8/2003 as well as the findings of the Enquiry Officer submitted to the management on 15/9/2003 the only charge stated to have been proved against the respondent by the Enquiry Officer is applying for leave on false ground and thereby he misled the management. As noted earlier, the ground for leave was supported by the medical certificate issued by the doctor of the petitioner - Medical Centre and the leave was sanctioned. The complainant's participation in the hunger strike on 8/8/2003 and 9/8/2003 cannot be the ground to hold that he applied for leave on false ground and, therefore, both the courts were right in answering the second issue against the petitioner. No interference is called for in the concurrent findings recorded by both the courts below under the supervisory powers of this court under Article 227 of the Constitution.

4. Hence the petition is rejected summarily.

(B.H. Marlapalle,J.)